United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 187—September Term, 1970.

(Argued October 22, 1970 Decided October 22, 1970.)

Docket No. 34190

FRANCESCO PAOLO LA FRANCA,

Petitioner,

—against—

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Before:

MEDINA, WATERMAN and FEINBERG,

Circuit Judges.

Petitioner, an alien who has been ordered to be deported, seeks review of a denial by the Board of Immigration Appeals of his motion to reopen the proceedings. Petition denied and statutory stay vacated.

MARIO M. DE OPTATIS, New York, N.Y., *for petitioner.*

STANLEY H. WALLENSTEIN, Special Assistant United States Attorney, New York, N.Y. (Whitney North Seymour, Jr., United States Attorney for the Southern District of New York, New York, N.Y., on the brief), *for respondent.*

PER CURIAM:

Petitioner Francesco Paolo La Franca, an alien who has been deported twice in the past, last entered the United States on February 20, 1967, as a nonimmigrant transit without visa authorized to remain for four days. Apprehended by Immigration Officers on June 13, 1968, he conceded deportability one week later and subsequently received two thirty-day extensions. Then followed a motion to reopen the deportation proceedings, which was denied, and a petition to this Court seeking review of the denial, which petition was dismissed on July 23, 1969 in *La Franca v. Immigration and Naturalization Service*, 413 F.2d 686 (2d Cir. 1969). Another motion to reopen the proceedings was filed on August 18, 1969, was denied on October 24, 1969, and this petition seeking review of the denial followed.

In his motion to reopen the deportation proceedings against him, petitioner requested a status adjustment from that of nonimmigrant without visa, within the meaning of §101(a)(15)(C) of the Immigration and Nationality Act, 8 U.S.C. §1101(a)(15)(C) (1964), to that of permanent resident. Petitioner alleges that his son Pietro, a lawful resident alien, is applying for naturalization and that the son's naturalization would give him immediate relative status on a visa petition by the son and allow him to obtain an immigrant visa without regard to the annual quota limitations established by §201 of the Act, 8 U.S.C. §1151 (1964), and qualify him for adjustment of status under §245 of the Act, 8 U.S.C. §1255 (1964). But Title 8, Code of Federal Regulations §214.2(c)(1) (1970) provides in part that:

> The privilege of transit without visa may be authorized only under the conditions that the alien will depart voluntarily from the United States, that he will not apply for adjustment of status under Section 245 of the Act * * *.

Sections 103(a) and 214 of the Act, 8 U.S.C. §§1103(a) and 1184 (1964), contain authority for the promulgation of this regulation by the Commissioner of Immigration and Naturalization, the delegate of the Attorney General, 8 C.F.R. §2.1 (1970). The Board of Immigration Appeals clearly did not abuse its discretion in denying the motion to reopen the proceedings as petitioner could not have been granted the relief requested.

The petition for review is denied, and the statutory stay is vacated.

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of November 1970, I served two (2) copies of the foregoing Brief for Respondent upon counsel for the petitioner by mailing two (2) copies, postage prepaid to: Milton C. Gelenian, 1776 K Street, N. W., Washington, D. C.

MURRAY R. STEIN,
Attorney,
Department of Justice,
Washington, D. C. 20530.

GPO 890-506